

Application Serial No. 10/534,663
Attorney Docket No. 10191/3744
Reply to Office Action of March 28, 2007

Amendments to the Drawings:

The accompanying Replacement Sheet for Figure 9 clarifies the wording within the blocks. No new matter has been added, and the Replacement Sheet is supported by the present application, including the specification. Entry and approval of amended Figure 9 is respectfully requested.

Attachments: 1 Replacement Sheet.

REMARKS

Claims 21 to 28 are added, and therefore claims 11 to 28 are pending.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

The accompanying Replacement Sheet for Figure 9 clarifies the wording within the blocks. No new matter has been added, and the Replacement Sheet is supported by the present application, including the specification. It is noted that formal draftsman drawings are not required under the rules. Entry and approval of amended Figure 9 is respectfully requested.

Claims 11 and 13 to 20 were rejected under 35 U.S.C. § 102(b) as anticipated by Huber et al., U.S. Patent No. 5,327,014.

As regards the anticipation rejections of the claim, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejection, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the anticipation rejections may not be agreed with, to facilitate matters, claim 11 now provides for “*triggering appropriate ones of the restraint devices as a function of the crash severity and the crash type*”, which is not identically described (nor even suggested) by the applied reference.

The text (see, e.g., col. 5, lines 55 to 66) cited by the Office Action only refers to an expert determining the crash type after the event based on the stored data. Accordingly, the cited text simply does not identically disclose the features of claim 11, so that claim 11 is allowable, as are its dependent claims 12 to 19.

Claim 20, as presented, includes features like those of claim 11 and is therefore allowable for essentially the same reasons as claim 11, as presented.

Claim 12 was rejected under 35 U.S.C. § 103(a) as obvious over Huber et al., U.S. Patent No. 5,327,014, in view of Bischoff et al., U.S. Patent No. 5,742,916.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 12 depends from claim 11, as presented, and is therefore allowable for essentially the same reasons as its base claim 11, since the secondary reference does not cure – and is not asserted to cure -- the critical deficiencies of the primary Huber reference.

Accordingly, claims 11 to 20 are allowable.

New claims 21 to 28 do not add any new matter and are supported by the present application. Claims 21 to 28 correspond to claims 12 to 19, except that they depend from apparatus claim 20, and are allowable for the same reasons as claim 20, as presented.

Accordingly, claims 11 to 28 are allowable.

CONCLUSION

In view of the above, it is respectfully submitted that all of the presently pending claims 11 to 28 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since they have been obviated. Since all issues raised have been addressed, an early and favorable action on the merits is respectfully requested.

Dated: _____

6/20/2007

Respectfully Submitted,

By: _____

Gerard A. Messina
(Reg. No. 35,952)

KENYON & KENYON LLP
One Broadway
New York, NY 10004
(212) 425-7200

CUSTOMER NO. 26646

1367054